IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12317 of 2007
With
SPECIAL CIVIL APPLICATION No. 12340 of 2007
To
SPECIAL CIVIL APPLICATION No. 12341 of 2007
With
SPECIAL CIVIL APPLICATION No. 16060 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RANA NARANSINGH MANGALSINH
Versus
RANA GANUBHA DOSUBHA
(OWNER OFSHAKTI TRANSPORT CORPORATION) AND OTHERS

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Appearance :
MR PJ YAGNIK for the Petitioner
None for Respondent(s) : 1 - 5.
MR SUNIL B PARIKH for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 10/07/2007

ORAL JUDGMENT

Rule. Mr Sunil B Parikh, learned advocate waives service of Rule for the respondent. At the request of the learned advocates for the parties, these matters are taken up for final hearing today.

This group of four petitions is directed against common order passed by the MAC Tribunal (Auxiliary) No.1, Ahmedabad Rural dated 24.11.2006 in Civil Misc. Application No.845 of 1989 in MAC Petition No.917 of 1986, hence they are heard together and are being disposed of by this common judgment.

The claim petitions were filed for obtaining compensation for the injury suffered by the petitioner in a vehicular accident. The said petitions were dismissed for default on 16th January 1999. Later on, the petitioner filed application i.e. after about six months requesting the Tribunal to restore the main claim petitions on the file for ther disposal on merits. These applications have been rejected by the Tribunal as stated above by the impugned order. The impugned order has been passed on the ground that the petitioners have not been able to show the sufficient cause and the petitioners have not preferred separate application praying for condonation of delay.

I have heard Mr P.J. Yajnik, learned advocate for the petitioner and Mr Sunil B Parikh, learned advocate for the respondent – insurance company. It is submitted by Mr Yajnik that there was merely a technical flaw since the petitioners did not file separate application for condonation of delay. In fact, later on, that defect was also cured. He

has further submitted that due to reasons beyond the control of the petitioners the delay had occurred in filing the application for restoration and, therefore, the Tribunal ought to have condoned the delay. As against that, Mr Parikh has submitted that the matters have been hanging fire since 1986 and at this stage the petitioners cannot be permitted to re-open the entire chapter. He has further submitted that this will also cause unnecessary burden on the insurance company in the event it is directed to pay the award together with interest from the date of the application till realisation.

I have carefully considered the submissions of the learned advocates for the parties. I have also carefully considered the record of the petition and in particular the restoration application and the impugned order. It appears that the circumstances that prevented the petitioners from filing the restoration application in time have been adequately set out in paragraphs 5 and 6 of the restoration application. Considering these averments, in my opinion, the petitioners have adequately explained the cause of delay and, therefore, it is required to be condoned. So far as technical irregularity is concerned, in my opinion, the substantive rights of the petitioners to obtain compensation cannot be defeated merely on technical grounds. The Tribunal ought to have condoned the irregularity also and ought to have restored the petitions on file for their disposal on merits.

In view of the aforesaid, the delay caused in filing the restoration applications is hereby condoned. The applications are granted and the Tribunal is ordered to restore the main petitions on file for their disposal on merits. It is, however, clarified that it will be open for the insurance company to contend that since the delay was caused on account of the petitioners, in the event of the Tribunal deciding to award interest, the

said fact should be kept in view and the appropriate decision to award interest be taken thereafter by the Tribunal. Considering the fact that the claim cases are very old, the Tribunal is directed to decide the claim petitions on or before 31st December 2007.

In view of the aforesaid, the petitions are allowed. Rule is made absolute with no order as to costs.

(Akshay H Mehta, J.)

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